

FOR REGISTRATION JUDITH A. GIBSON
REGISTER OF DEEDS
MECKLENBURG COUNTY, NC
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DECLARATION OF EASEMENTS AND RESTRICTIONS FOR KINGS CROSSING

THIS DECLARATION OF EASEMENTS AND RESTRICTIONS (this "Declaration"), dated February 27, 2007, is made by WAITING ROOM 1, LLC, a North Carolina limited liability company ("Declarant").

RECITALS

A. Declarant is the owner of multiple parcels of real property containing an aggregate of approximately 10.574 acres, located at the southeast corner of Mallard Creek Road and Galloway Road, in the City of Charlotte, Mecklenburg County, North Carolina (the "Property"). The Property is more particularly shown on that plat entitled "Minor Subdivision, Kings Crossing," prepared by The Isaacs Group, P.C., dated December 13, 2006, and recorded in Map Book 47 at Page 705 in the Mecklenburg County Public Registry (the "Plat").

B. Pursuant to the Plat, the Property has been subdivided into two parcels, and portions of the Property have been dedicated for public use. Declarant intends to convey Lot 1 of the Property, as shown on the Plat, to Eastbourne Mallard LLC ("Eastbourne"), and to develop a medical office building on lot 2 of the Property, as shown on the Plat. Eastbourne intends to further subdivide Lot 1, and either to develop the subdivided parcels for office purposes or related commercial uses, or to convey the subdivided parcels to third parties for such purposes. Declarant, Eastbourne and/or those third parties intend to construct buildings and related improvements on the Property, all generally in accordance with the site plan of the Property attached hereto as Exhibit A and made a part hereof (the "Site Plan").

C. Declarant desires that the various parcels comprising the Property be developed in conjunction with one another as an integrated commercial development in accordance with the Site Plan, the current zoning classification of the Property, and the various governmental approvals obtained (or to be obtained) for the project by Declarant. In addition, Declarant desires to create non-exclusive reciprocal easements over certain portions of the Property that are designed for the common use of all owners, to impose certain use restrictions and maintenance

standards on each Parcel, and to provide a mechanism for the sharing of the cost of maintaining certain common improvements within the Property.

D. Declarant also has deemed it desirable to create a nonprofit, incorporated association which will be delegated and assigned powers of maintaining and administering the common improvements within the Property, of administering and enforcing the covenants and restrictions created in this Declaration, of levying, collecting and disbursing the assessments and charges created in this Declaration, and of taking any steps or performing any acts deemed necessary or appropriate to preserve the values of the Property and to promote the welfare of the owners of Parcels within the Property.

E. In order to accomplish the foregoing, Declarant is executing and recording this Declaration.

NOW, THEREFORE, Declarant, by this Declaration, hereby declares that the Property is and shall be held, transferred, sold, conveyed and occupied subject to the covenants, conditions, restrictions, easements, charges and liens set forth in this Declaration, all of which shall run with the Property and be binding on any Person (as defined below) owning any right, title or interest in any Parcel, and its heirs, successors and assigns, and all of which shall inure to the benefit of each Owner (as defined below) of any Parcel (as defined below), and its heirs, successors, designees and assigns.

ARTICLE I

DEFINITIONS

Section 1. **“Association”** shall mean Kings Crossing Owners Association, Inc., a North Carolina non-profit corporation, and its successors and assigns.

Section 2. **“Board”** shall mean the Board of Directors of the Association.

Section 3. **“Bylaws”** shall mean the bylaws of the Association, a copy of which is attached hereto as Exhibit B, as they may be amended from time to time

Section 4. **“Common Area Costs”** shall mean the costs of operating, maintaining and insuring the Designated Maintenance Items, as more particularly described in Article V, Section 2, pursuant to and in accordance with this Declaration, the Bylaws, and N.C.G.S. §47F-1-103(5).

Section 5. **“Common Areas”** shall mean all facilities and Improvements located on the Property (including those within adjacent Right-of-Way Areas) that are designed, constructed and intended for the general use, in common, of the Occupants of the Property, including, but not limited to, internal private roadways, sidewalks, walkways, traffic control devices, retaining walls, streetscape improvements, the Entrance Sign, plants (including trees, shrubs, flowers, ground cover and grass) and landscaped areas, benches, shelters, signs, banners, flags, lighting facilities (including light poles, fixtures, bulbs, tubes, ballasts, wiring and all equipment related thereto), common private utility lines (including sewer, water, electric, gas and

telecommunication lines), common storm drainage facilities, fountains and related plumbing, and sprinkler and irrigation systems. The term “**Common Areas**” also shall include all the real property and Improvements located within the Roadway Easement Area and the Drainage Easement Areas, including without limitation the Storm Water Detention Facilities. The determination of whether a particular facility or improvement (outside of the Roadway Easement Areas and the Drainage Easement Areas) constitutes a Common Area shall be made from time to time by the Association.

Section 6. “**Declarant**” shall mean Waiting Room 1, LLC, a limited liability company organized and existing under the laws of the State of North Carolina, or any successor entity, or any entity to which the rights of Waiting Room 1, LLC are assigned under the terms of Article X, Section 11.

Section 7. “**Designated Maintenance Items**” shall mean the following portions of the Common Areas, the cost of operating, maintaining and insuring which shall be shared by the Owners in the manner provided in Article IV, Section 6: (a) all Improvements located within the Roadway Easement Areas (including all paved roadways, pavement striping, curbs, gutters, curb cuts, entrances, exits, medians, traffic control devices, signs (including the Entrance Sign), light poles, banners, flags, landscaping, irrigation systems, and fountains); (b) all landscaping and similar streetscape improvements located within the Right-of-Way Areas around the perimeter of the Property; (c) the Storm Water Detention Facilities; and (d) all common utility lines serving more than one Parcel that are not operated and maintained by a municipality or public utility company.

Section 8. “**Drainage Easement Areas**” shall mean those portions of the Property that are identified as “Permanent Detention Easement” on the Plat, within which will be constructed underground storm drainage lines and related facilities, including but not limited to the Storm Water Detention Facilities.

Section 9. “**Entrance Sign**” shall mean the free-standing monument sign or similar entry features, and associated improvements such as utility connections, lighting fixtures and landscaping, to be constructed within the Roadway Easement Area at its intersection with Mallard Creek Road, as shown on the Site Plan.

Section 10. “**Improvements**” shall mean all buildings, outbuildings, underground utility and irrigation installations, slope alterations, roads, driveways, parking areas, sidewalks, boardwalks, fences, screening walls and barriers, retaining walls, stairs, decks, windbreaks, plants, trees, shrubs, poles, signs, loading areas and all other structures or landscaping improvements of every type and kind located on the Property.

Section 11. “**Management Firm**” shall mean the property management firm engaged by the Association in accordance with Article V, Section 3.

Section 12. “**Member**” shall mean any Person that is a member of the Association.

Section 13. “**Mortgage**” shall mean and refer to a mortgage or deed of trust constituting a first lien on a Parcel.

Section 14. **“Mortgagee”** shall mean and refer to an owner or holder of a Mortgage that has notified the Association in writing of its name and address, and that it holds a Mortgage on a Parcel.

Section 15. **“North Carolina Planned Community Act”** shall mean and refer to Chapter 47F of the North Carolina General Statutes, as it may be amended from time to time.

Section 16. **“Occupant”** shall mean and refer to any person or persons in possession of a Parcel, including Owners, lessees and sublessees from Owners, and their employees, guests, invitees and contractors.

Section 17. **“Owner”** shall mean any record owner of fee simple title to any Parcel, excluding any Mortgagee (in which event the grantor shall remain the Owner) and excluding the Association. Notwithstanding the foregoing, (a) if a Parcel is owned by more than one person or entity as tenants in common, those parties shall designate one person or entity to act as **“Owner”** of that Parcel for purposes of this Declaration; absent such a designation, the owner of the largest undivided interest shall be deemed the **“Owner”** of that Parcel; and (b) in a deed of conveyance executed in connection with a sale/leaseback transaction, the grantor/lessee may specify that it remains an **“Owner”** for purposes of this Declaration, and that designation shall be binding upon all other Owners so long as such grantor/lessee, or its successor or assignee, retains a leasehold interest in its Parcel.

Section 18. **“Parcel”** shall mean any portion of the Property which has been properly subdivided for any purpose, including conveyancing or ground leasing, or for real property tax purposes. As of the date of recording of this Declaration, the Parcels are as shown on the Plat, but the term **“Parcel”** shall, in the future, also refer to any smaller Parcels into which the Parcels shown on the Plat may be legally subdivided, or any Parcels into which one or more Parcels may be recombined.

Section 19. **“Person”** shall mean any natural person, corporation, partnership, trust or other legal or commercial entity, or any combination thereof.

Section 20. **“Project Documents”** shall mean and refer to this Declaration, the Articles of Incorporation of the Association, the Bylaws, and the rules and regulations governing the use of the Property, as the foregoing may be amended and supplemented from time to time, and all attachments and exhibits thereto.

Section 21. **“Property”** shall mean all of the real property shown on the Plat, which is owned by Declarant.

Section 22. **“Right-of-Way Areas”** shall mean those portions of the public rights-of-way of Mallard Creek Road and Galloway Road that are immediately adjacent to the Property, which have been dedicated by Declarant or by others for public use, and on which may be constructed paved roadways, entrances and exits, landscaping, and related streetscape improvements.

Section 23. **“Roadway Easement Areas”** shall mean those portions of the Property that are cross-hatched and identified as **“Access Easements”** on the Plat, which will be subject to

the easements created by Article III of this Declaration and on which Declarant and/or Eastbourne will construct a paved roadway, entrances and exits, medians, sidewalks and related improvements, including but not limited to the Entrance Sign.

Section 24. **“Site Plan”** shall mean the site plan of the Property attached hereto as Exhibit A.

Section 25. **“Storm Water Detention Facilities”** shall mean the storm water detention facilities serving the Improvements on the Property, including without limitation a storm water detention pond and related facilities to be constructed within the Drainage Easement Area.

ARTICLE II

PROPERTY SUBJECT TO THIS DECLARATION

Section 1. Property. The Property shall be held, transferred, sold, conveyed and occupied subject to the covenants, conditions, restrictions, easements, charges and liens created by this Declaration. This Declaration shall not encumber any other real property owned by Declarant, or by affiliates of Declarant, outside the boundaries of the Property.

Section 2. Binding Effect. The terms and conditions of this Declaration: (a) shall run with title to each Parcel, (b) shall be binding on any Person owning any right, title or interest in any Parcel, and its heirs, successors and assigns, and (c) shall inure to the benefit of each Owner of any Parcel, and its heirs, successors, designees and assigns.

ARTICLE III

EASEMENTS AND COMMON AREAS

Section 1. Drainage and Roadway Easements. Subject to the terms of this Declaration, each Owner shall have the following easements, which shall be appurtenant to and run with title to its Parcel:

(a) A perpetual non-exclusive easement over the Drainage Easement Areas to drain surface water from its Parcel into the underground storm water pipes and related drainage facilities (including but not limited to the Storm Water Detention Facilities) within the Drainage Easement Areas.

(b) A perpetual non-exclusive easement over the Roadway Easement Areas to use all of the roadways, sidewalks, and related Improvements within the Roadway Easement Areas for the purpose of providing pedestrian and vehicular access to and from each Parcel to and from the Right-of-Way Areas surrounding the Property.

(c) Subject to the terms of Article V, Section 3, a perpetual non-exclusive easement to maintain, repair and replace all of the drainage facilities and other

Improvements located within the Drainage Easement Areas (including but not limited to the Storm Water Detention Facilities), and all roadways, sidewalks and related Improvements within the Roadway Easement Areas, together with a perpetual non-exclusive right of access to the Drainage Easement Areas and the Roadway Easement Areas as may be reasonably necessary to exercise the easement rights set forth above.

Section 2. Other Cross Easements. Subject to the terms of this Declaration, each Owner shall have a perpetual non-exclusive easement to use all of the roadways, entrances and exits, drive aisles, sidewalks and similar Improvements designed for common use located within the Property, but outside of the Roadway Easement Areas, for pedestrian and vehicular ingress and egress, and other purposes for which those common Improvements are designed, without payment of any fee therefor, subject to the right of each Owner to relocate the Common Areas on its Parcel from time to time in accordance with the provisions of Article VIII, Section 2.

No barriers, fences or other obstructions shall be erected within the Property so as to interfere with the free flow of pedestrian and vehicular traffic between those portions of the Property from time to time devoted to vehicular roadways, pedestrian sidewalks or paved parking areas; provided, however, that the foregoing provisions (and the provisions of Article III, Section 1(b) above) shall not prohibit the reasonable designation and relocation of traffic and pedestrian lanes. In addition, each Owner may block traffic on its Parcel for the time necessary to prevent the creation of prescriptive easement rights, or as may be reasonably required for the purpose of repairing or replacing the roadways, sidewalks and parking areas on its Parcel. If possible, however, such action shall be taken on a day or at a time when the building Improvements on the Property would not otherwise be open for business.

Nothing in this Article III, Section 2 shall be deemed to grant to the Owner of any Parcel any rights to use the parking areas located on the Property outside of its Parcel for the parking of motor vehicles, except with respect to any parking spaces located partially on one Parcel and partially on another Parcel (which shall be subject to cross-parking easements in favor of the Owners of both affected Parcels), or to grant to the owner of any property outside of the Property any rights to use the parking areas located on the Property for the parking of motor vehicles, nor shall it be deemed to grant any Person the right to park motor vehicles on any portion of the Property not striped with parking spaces, such as roadways, entrances and exits, fire lanes and parking aisles.

Section 3. Utility and Other Easements. Subject to the terms of this Declaration, each Owner shall have a perpetual non-exclusive easement to install, use, maintain and replace all storm sewer, sanitary sewer, domestic water, fire protection water, natural gas, electric, telephone and other utility lines and facilities located or to be located within the Property, including those facilities (if any) shown and identified on the Site Plan, to serve or benefit the Improvements on its Parcel, subject to the following limitations:

- (a) All utility installations shall be underground, except as indicated on the Site Plan and except for equipment like junction boxes, meters, transformers and backflow preventers.

(b) The initial location of any utility lines and facilities shall be subject to the prior written approval of the Owner of the Parcel under or across which the utility lines and facilities are to be installed, and in no event shall any utility line be installed under any building Improvements constructed within the Property.

(c) Each Owner shall have the right to pave and landscape the surface within its Parcel over any underground utility lines, and to grant additional easements to third parties within the areas in which those utility lines are located, so long as such actions do not unreasonably interfere with the use and enjoyment of the easement rights created hereby.

(d) To the extent that responsibility for such maintenance is not assumed by the appropriate public utility, (1) the maintenance of any utility line or facility located within the Property that serves only a single Parcel shall be the responsibility of the Owner of the Parcel served by that utility line or facility, regardless of the location of that line or facility; and (2) the maintenance of any utility line or facility located on the Property that serves multiple Parcels shall be a Designated Maintenance Item.

(e) Any Owner going onto the Parcel of another Owner to install or maintain utility lines or facilities shall perform such work in a manner to minimize any disruption of business on the Parcel on which the utility lines or facilities are located, and shall promptly repair at its expense any damage (including damage to paved or landscaped areas) caused by such installation or maintenance, so as to restore such Parcel to its original condition. Prior to the entry by any Owner onto the Parcel of another Owner, such Owner shall use reasonable efforts to provide at least 48 hours prior notice of such entry.

(f) Each Owner shall have the right to relocate the utility lines and facilities located on its Parcel at its expense if necessary for the development of Improvements on its Parcel, so long as the approval of the appropriate municipal utility department or public utility, if applicable, is obtained and arrangements are made for continued utility service to all other Owners benefitted by the utility being relocated, and provided that no such relocation shall be undertaken during the months of November or December.

Notwithstanding the foregoing, each Owner (the **“Dominant Owner”**) who installs, uses, maintains or replaces any utility lines or facilities under or across the Parcel of another Owner (the **“Servient Owner”**) shall indemnify and hold the Servient Owner harmless from and against any and all claims, damages, losses, costs and expenses that may be caused or occasioned by the Dominant Owner, its tenants, contractors, agents or employees, in connection with its installation or maintenance work under this Article III, Section 3, and the Dominant Owner shall promptly discharge or bond (within thirty (30) days after receipt of notice of filing) any and all liens filed against the Servient Owner’s Parcel or any portion thereof as a result of or relating to any installation or maintenance undertaken by or on behalf of the Dominant Owner. In addition each Dominant Owner shall indemnify and hold the Servient Owner and its successor in title harmless from and against all claims, damages, losses, costs and expenses that may arise as a direct result of any toxic or hazardous substance that the Dominant Owner causes by its action or the actions of its tenants, contractors, agents or employees.

Section 4. Entrance Sign Easement. Declarant and/or the Association shall have the right to erect the Entrance Sign at the location shown on the Site Plan, in accordance with the conceptual plans for the Entrance Sign attached hereto as Exhibit C. If the City of Charlotte or another appropriate governmental agency requests that the Entrance Sign be relocated, as a result of a road widening or otherwise, Declarant and/or the Association may relocate the sign easement area with the prior written consent of the Owner of the Parcel on which the sign easement area is located, not to be unreasonably withheld. In that event, Declarant and/or the Association and such Owner may execute and record an amendment to this Declaration, substituting a revised Site Plan showing the new location of the sign easement area, without the joinder of any other party.

Declarant and/or the Association shall have a perpetual exclusive easement over the area on which the Entrance Sign is located, for the purpose of installing, maintaining, operating, illuminating, repairing or replacing the Entrance Sign, including a perpetual non-exclusive right of access as may be reasonably necessary for it to exercise the foregoing easement rights, so long as it repairs any damage resulting from its entry. Declarant and/or the Association shall exercise their easement rights under this Article III, Section 4 in a manner that minimizes interference with the operations of any permitted use on the Parcel on which the Entrance Sign is located, and in particular shall limit their access rights, to the extent practical, over the paved areas on such Parcel.

Section 5. Construction Easements. Declarant shall have full rights of ingress and egress to and through, over and about the Common Areas during such period of time as Declarant is engaged in any construction or improvement work on or within the Property. Declarant further shall have an easement for the purpose of the storage of materials, vehicles, tools, and equipment which are being utilized in such construction. No Owner, or its guests or invitees, shall in any way interfere or hamper Declarant, its employees, successors or assigns in connection with such construction.

Section 6. Easement for Maintenance. The Association, or any person authorized by it (including but not limited to the Management Firm) shall have the right of access over the Common Areas to the extent necessary for performance of its obligations of maintenance, repair, or replacement of the Designated Maintenance Items, as provided in Article V, Section 3.

Section 7. Delegation of Use. The easements granted to every Owner in this Article III may be delegated by each Owner, in connection with its development and use of its Parcel, to its tenants, employees, contract purchasers, agents, contractors and invitees.

Section 8. Easements and Property Rights Appurtenant to Parcel. All easements and other property rights of Owners created in this Article III shall be appurtenant to each Parcel and shall run and pass with the title to such Parcel.

Section 9. Terms and Conditions of Easements. All easements and other property rights of Owners created in this Article III shall be deemed appurtenant to each benefited Parcel, shall inure to the benefit of each benefited Owner, and are granted subject to the following conditions and reservations:

(a) The right of the Association, in accordance with the provisions of Article III, Section 10 below and the Project Documents, to mortgage, pledge, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred;

(b) The right of the Association, in accordance with the provisions of Article III, Section 10 below and the Project Documents, or of any burdened Owner, to dedicate or transfer all or any part of the Roadway Easement Areas or the Drainage Easement Areas to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Association or such Owners; and

(c) The right of the Association, or of any burdened Owner, to grant and reserve easements and rights-of-way through, under, over and across the Roadway Easement Areas or the Drainage Easement Areas, for the installation, maintenance and inspection of utility facilities

Section 10. Conveyance of Common Areas. While the Property remains subject to this Declaration, no conveyances of (including dedications) or security interests or liens of any nature shall arise or be created against the Common Areas owned in fee by the Association without the prior written consent of at least eighty percent (80%) of all Owners, including at least eighty percent (80%) of all Owners other than Declarant, and at least eighty percent (80%) of all Mortgagees. Any grant of a mortgage or security interest in such Common Areas shall expressly be subject to the rights and easements created by this Declaration. Every agreement for the performance of labor or the furnishing of materials to such Common Areas, whether oral or in writing, must provide that it is subject to the provisions of this Declaration and that the right to file a mechanic's lien or other similar lien by reason of labor performed or material furnished is subordinated to this Declaration.

ARTICLE IV

THE ASSOCIATION

Section 1. Automatic Membership. All Owners shall automatically be Members of the Association, and shall enjoy the privileges and be bound by the obligations contained in the Project Documents, including the obligation to pay assessments to the Association. Ownership of any fee or undivided interest in any Parcel shall be the sole qualification for membership in the Association, and upon the acquisition by any Person of such interest in any Parcel, such Person shall be deemed to have consented to become a member of the Association. Membership shall be appurtenant to and may not be separated from the ownership of any Parcel. The Board may make reasonable rules regarding proof of ownership.

Section 2. Voting Rights. The Owner (or group of Owners) of each Parcel shall be entitled to one (1) vote in the Association. If fee simple title to a Parcel is owned of record by more than one person or entity, all such persons or entities shall be Members of the Association, but the vote with respect to any such jointly owned Parcel shall be cast by the Person designated as the Owner of that Parcel under Article I, Section 19. In no event shall more than one (1) vote in the Association be cast with respect to each Parcel.

Section 3. Directors Appointed by Declarant. The initial Board shall consist of three (3) persons appointed by Declarant. These persons may or may not be employees of Declarant, and need not own or occupy a Parcel. Until these persons are replaced by elected Board members at the first annual meeting of Members, they shall constitute the Board of the Association and exercise all powers and duties granted to the Board in the Bylaws. The initial directors are specifically authorized to fix the annual assessments for periods through December 31, 2007 and to enter into a Management Agreement for the Association, subject to the limitations set forth in Article V, Section 3 below.

Section 4. Creation of the Lien and Personal Obligation of Assessments. Declarant, for each Parcel owned within the Property, hereby covenants, and each Owner of any Parcel, by acceptance of a deed therefor, is deemed to covenant and agree to pay annual assessments or charges to the Association, such assessments to be established and collected as provided in this Article IV. Each such assessment, together with interest, costs and reasonable attorneys' fees, shall be a continuing lien upon the Parcel against which each such assessment is made. Each such assessment, together with interest, costs and reasonable attorneys' fees, shall also be the personal financial obligation of the person who was the Owner of such Parcel at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to its successors in title (other than as a lien on the Parcel) unless expressly assumed by them.

Section 5. Purpose of Assessments. The assessments levied by the Association shall be used for the payment of the Common Area Costs, as more particularly set forth in Article V, Section 2.

Section 6. Calculation of Assessments. The Common Area Costs incurred by the Association shall be assessed against each Parcel based upon the respective acreages of each Parcel, with each Parcel's proportionate share equal to a fraction, the numerator of which is the acreage of that Parcel, and the denominator of which is the aggregate acreage of all Parcels within the Property.

Section 7. Payment of Assessments. The Owner of each Parcel shall pay assessments to the Association for its applicable share of the Common Area Costs incurred by the Association in each calendar year, in accordance with the provisions of this Article IV, Section 7. The obligations of the Owners of all Parcels to pay assessments shall commence on the date that the Improvements on any Parcel are opened for business to the public. The first annual assessment shall be adjusted according to the number of months remaining in the fiscal year of the Association.

Once the obligation of each Owner to pay assessments under this Article IV, Section 7 has commenced, such obligation shall not be affected by the subsequent destruction or

demolition of the building Improvements on its Parcel. NO OWNER MAY WAIVE OR OTHERWISE ESCAPE LIABILITY FOR THE ASSESSMENTS PROVIDED FOR HEREIN BY NON-USE OF THE COMMON AREAS OR ABANDONMENT OF ITS PARCEL.

On or before January 1 of each year, the Association shall prepare a budget of the estimated Common Area Costs for the ensuing calendar year, and shall furnish a copy of that budget to each Owner, together with a calculation of the applicable assessments for the ensuing calendar year. This estimated annual charge shall be paid to the Association in four (4) equal quarterly installments, in advance on or before the first day of each calendar quarter. Following the end of each calendar year, the Association will furnish to each Owner a statement showing in reasonable detail the actual amount of Common Area Costs incurred in the preceding calendar year, and the actual assessments payable by each Owner. If the estimated quarterly payments made by an Owner in that calendar year are less than its actual share of Common Area Costs, such Owner shall pay the deficit to the Association within thirty (30) days after the annual statement. If the estimated quarterly payments made by an Owner in that calendar year are greater than its actual share of Common Area Costs, any surplus will, at the election of the Association, either be refunded to that Owner, or credited by the Association against the quarterly estimated payments thereafter coming due.

Section 8. Effect of Nonpayment of Assessments: Remedies of the Association. If any annual assessment, or quarterly installment thereof, is not paid within thirty (30) days after its due date, the Board may, at its option, declare the entire unpaid assessment, both annual and special, immediately due and payable, and such unpaid assessment shall bear interest from and after the due date at the rate of eighteen percent (18%) per annum, not to exceed, however, the maximum rate permitted by law. In addition, interest, reasonable attorneys' fees (not to exceed fifteen percent (15%) of the amounts due) and costs of such action or foreclosure shall be added to the amount of such assessment. Any sum assessed by the Association remaining unpaid for a period of thirty (30) days or longer shall constitute a lien on the Parcel with respect to which such sum was assessed upon filing in accordance with N.C.G.S. §47F-3-116, and shall be enforceable by the Association in accordance with N.C.G.S. §47F-3-116 and Section 8 of the Bylaws.

During any period in which an Owner is in default in the payment of any installment of an annual, special or other assessment levied by the Association, the voting rights of the Owner in the Association and the right to the use of the Common Elements or any other services or facilities which is provided by the Association (except the right of access to the Owner's Parcel and the right of access to utility service for such Parcel) may be suspended by the Association until such assessment is paid. In the event of violation by an Owner of any rules or regulations duly established by the Association, such Owner's voting and use rights may be suspended by the Board in accordance with the procedures specified in N.C.G.S. §47F-3-107A and the Bylaws.

Section 9. Subordination of the Lien to Mortgages. The lien of the assessments provided for in this Article IV shall be subordinate to the lien of any Mortgage on any Parcel, and shall be subordinate to any tax lien or special assessment on a Parcel made by lawful governmental authority. Sale or transfer of any Parcel shall not affect the assessment lien. However, the sale or transfer of any Parcel by foreclosure of any Mortgage, or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which became due prior

to such sale or transfer. Such unpaid assessments shall be deemed to be expenses of the Association assessable against and collectible from all Owners, including the Owner of the Parcel acquired as a result of foreclosure of the Mortgage, its heirs, successors and assigns. No sale or transfer shall relieve such Parcel from liability for any assessments thereafter becoming due or from the lien thereof.

Section 10. No Obligation of Declarant to Provide Funds. Declarant shall have absolutely no obligation to make payments to or for the Association for any purpose except for its obligation to make periodic payment of assessments levied on any Parcel that Declarant may from time to time own and that is subject to assessment. With respect to Parcels owned by it, Declarant's obligations to pay assessments for Common Area Costs may be satisfied in the form of cash payments to the Association or "in kind" contributions of services that would otherwise be included within Common Area Costs, or a combination of these. Declarant may, at its discretion, lend funds to the Association from time to time as required, which loans shall be repayable with interest at a rate no higher than the prime rate of interest listed in the "Money Rates" table of The Wall Street Journal, and with a maturity date no more than one (1) year from the date of advancement of funds.

Section 11. Reserve Funds. From and after the recording of this Declaration, the Association may establish and maintain a reserve fund or funds for replacement and maintenance of the Designated Maintenance Items. In that event, the Association shall allocate revenues from assessments to such reserve fund or funds in such amounts and in such manner as may be established from time to time by the Board. The reserve fund or funds shall be segregated from operating funds of the Association and may be in the form of a cash deposit, or invested in certificates of deposit or similar obligations issued by a bank or savings and loan association or the obligations of, or fully guaranteed as to principal by, the United States of America. The reserve fund or funds shall be used for the purpose of repairing, replacing and maintaining any facilities owned by the Association, and for such other purposes as may be determined by the Board.

Section 12. Association to Maintain Books and Records. The Association shall maintain at all times current copies of all Project Documents, all rules and regulations concerning the Property, as well as its own books, records and financial statements, and same shall be available for inspection by any Owner and any Mortgagee during normal business hours upon at least three (3) business days' prior written notice to the Association.

Section 13. Voluntary Conveyance; Estoppels. Except as provided in Article IV, Section 9 above, the lien for assessments of the Association created in this Article IV shall not be affected by any conveyance of a Parcel, and shall remain a continuing charge on that Parcel and a continuing lien which may be foreclosed as provided in Article IV, Section 8 above. Any grantee in a voluntary conveyance shall be entitled to a statement from the Board, setting forth the amount of the unpaid assessments against the grantor due the Association and such grantee shall not be liable for, nor shall the Parcel conveyed be subject to a lien for, any unpaid assessments made by the Association against the grantor in excess of the amount set forth in that statement.

ARTICLE V

MAINTENANCE OF DESIGNATED MAINTENANCE ITEMS

Section 1. Maintenance of Designated Maintenance Items. The maintenance of the Designated Maintenance Items shall be the responsibility of the Association in the manner provided in this Article V. In particular, the Association shall be responsible for maintaining all Improvements located within the Roadway Easement Areas to the standards set forth in Article VI, Section 2, and for maintaining the Storm Water Detention Facilities. Notwithstanding the foregoing,

(a) During the period of construction and/or installation of any Designated Maintenance Item, Declarant shall be responsible, at its expense, for the ongoing maintenance of such Designated Maintenance Item, and upon completion, Declarant shall cause such Designated Maintenance to be turned over to the Association for maintenance, or conveyed in fee to the Association, in good condition and repair, and in compliance with all applicable governmental ordinances and regulations; and

(b) During the period of any construction warranty applicable to any Designated Maintenance Item, Declarant shall use commercially reasonable good faith efforts, upon request from the Association, to enforce such warranty against the applicable contractor or vendor on behalf of the Association. To the extent assignable, Declarant shall assign to the Association all warranties received by it with respect to any Designated Maintenance Items.

Section 2. Definition of Common Area Costs. As used in this Declaration, the term “**Common Area Costs**” shall mean all of those costs associated with the maintenance and operation of the Designated Maintenance Items, including, but not limited to, the following:

(a) The cost and expense of maintaining, repairing and replacing all Improvements located within the Roadway Easement Areas, including the Entrance Sign, and all landscaping and related improvements within the Right-of-Way Areas.

(b) The cost and expense of maintaining, repairing and replacing the Storm Water Detention Facilities.

(c) The cost and expense of any other maintenance, repair or replacement of the Common Areas undertaken by the Association, net of any reimbursements that the Association may receive from the Owner(s) of such Common Areas.

(d) The cost of all utility services (such as electricity and water) used in connection with the operation of the Designated Maintenance Items.

(e) The cost of lighting, operating, maintaining, repairing and replacing all identification signs on the Property, including but not limited to the Entrance Sign.

(f) The payment of ad valorem real property taxes on the Entrance Sign, to the extent separately assessed for tax purposes.

(g) The payment of insurance premiums for the insurance policies maintained by the Association in accordance with the Project Documents.

(h) The establishment of reserves in accordance with Article IV, Section 11.

(i) The cost of attorneys and accountants employed to represent the Association when appropriate.

(j) If the Association engages a Management Firm, a management fee to the Management Firm in an amount not to exceed fifteen percent (15%) of all other Common Area Costs, exclusive of real estate taxes and insurance premiums; provided, however, that in no event shall the management fee be less than One Thousand Five Hundred Dollars (\$1,500.00) per month, notwithstanding the 15% limit set forth above.

(k) If the Association engages a Management Firm, all other expenses reimbursable to the Management Firm under the terms of the management agreement, including but not limited to travel expenses and an hourly charge for personnel of the Management Firm for services exclusively dedicated to the Property, such as property inspections or preparation of financial statements.

Section 3. Management Firm. The Association may, from time to time, engage a qualified property management firm, properly licensed in the State of North Carolina (the “**Management Firm**”), to oversee and coordinate the operation, maintenance, repair and replacement of the Designated Maintenance Items, and to act on behalf of the Association in the performance of its duties and obligations under this Declaration, including but not limited to the preparation of budgets, the collection of assessments, the maintenance of insurance policies, the payment of taxes and the enforcement of the covenants set forth in this Declaration. The Management Firm as so designated shall contract for and supervise such work, and shall pay the taxes assessed against the Entrance Sign. Any management and other agreements entered into by the Association shall provide that such agreements may be cancelled, with or without cause, upon no more than ninety (90) days’ notice and without penalty at any time. The Management Firm shall at all times be answerable to the Association and subject to its direction.

ARTICLE VI

MAINTENANCE STANDARDS

Section 1. Maintenance Prior to Development. Until such time as buildings or other Improvements are constructed on its Parcel, each Owner shall maintain its Parcel as a seeded or landscaped area, shall keep the grass mowed to a height of six (6) inches or less, shall promptly remove all trash and debris and generally shall maintain its Parcel in a safe, neat and clean condition at all times.

Section 2. Maintenance Following Development. Following construction of Improvements on its Parcel, each Owner shall maintain or cause to be maintained its Parcel in a safe, clean and attractive condition, and shall maintain and repair at its expense all Improvements on its Parcel (other than the Designated Maintenance Items, which shall be the responsibility of

the Association) in order to keep the same in good condition and repair in compliance with then current zoning laws, building codes and other governmental regulations and in a condition substantially similar to that existing upon the initial completion of the Improvements. Such maintenance obligation shall include, without limitation, the following:

- (a) Keeping and maintaining the exterior of all buildings and all sidewalks, walkways, roadways and paved parking surfaces in a good, safe, clean and sightly condition.
- (b) Removing promptly, to the extent reasonably practicable, snow, ice, surface water and debris from paved areas.
- (c) Keeping all directional signs, pavement signs and striping of paved areas distinct and legible.
- (d) Periodically mowing (at least once every ten (10) days during the growing season), leaf blowing and fertilizing all grassed areas on its Parcel, including areas in the adjoining public rights-of-way between the property line and the back of the curb line.
- (e) Caring for, fertilizing, pruning and replanting all landscaped and planted areas within its Parcel, including areas in the adjoining public rights-of-way between the property line and the back of the curb line, and removing and replacing all dead or dying plants within thirty (30) days except when prevented by seasonal conditions (i.e. middle of summer).
- (f) Maintaining all utility lines or facilities located within its Parcel, to the extent not maintained by the applicable public utility.
- (g) Keeping its Parcel clean, orderly, sanitary and free from objectionable odors and from termites, insects, vermin and other pests.

If any Owner, or a ground lessee acting on its behalf (a **"Defaulting Owner"**), fails to maintain its Parcel or the Improvements thereon, or if the need for maintenance, repair, or replacement of any portion of the Designated Maintenance Items is caused through the willful or negligent act of an Owner, its agents, employees, guests, lessees, invitees, or designees and is not covered or paid for by a policy of insurance maintained by the Association shall have the right to may undertake to maintain such area upon fifteen (15) days prior written notice to the Defaulting Owner, and the Defaulting Owner shall pay all costs and expenses of such maintenance to the Association within ten (10) days after receipt of a detailed invoice for such costs and expenses. The Association shall have the remedies specified in Article IV, Section 8 for non-payment of any such amount.

ARTICLE VII

PERMITTED USES

Section 1. Permitted Uses. The Property shall be used only for commercial purposes compatible with the operation of a first-class mixed use development, and not in violation of the following restrictions:

(a) No portion of the Property shall be used for industrial or manufacturing purposes, for any agricultural or refining operation, or as a commercial warehouse or storage facility.

(b) Except as set forth below, no portion of the Property shall be used for residential purposes, including without limitation, apartments, single-family homes, a mobile home park or a trailer court; provided, however, that the foregoing restriction shall not be deemed to preclude the operation of any hotel, motel or extended stay lodging facility on the Property. The foregoing shall not preclude the inclusion of mixed use commercial and retail development.

(c) No portion of the Property shall be used as a surplus or second-hand store, a flea market, a laundromat, a tattoo parlor or body-piercing establishment, a massage parlor, or for the sale or display of pornographic materials or illicit drug paraphernalia.

(d) No portion of the Property shall be used as a junkyard, or for the dumping, disposing, incineration or reduction of garbage, exclusive of dumpsters or compactors ancillary to a permitted retail or commercial use.

(e) No portion of the Property shall be used for the sale, leasing, display or repair of mobile homes, motor vehicles, boats, trailers or RVs.

(f) No portion of the Property shall be used for the operation of a carnival, billiard parlor, off-track betting facility, other gambling facility, discotheque or dance hall, or movie theater.

(g) No portion of the Property shall be used for the operation of a skating rink, bowling alley, video parlor, bingo parlor or other place of recreation and amusement not customarily found in a first-class commercial development.

(h) No portion of the Property shall be used for the operation of a fast food restaurant with a drive-through window.

(i) No portion of the Property outside of Parcel C shall be used for the operation of a medical office devoted to family practice, pediatrics or internal medicine (collectively, the "**Restricted Medical Use**"), provided, however, that such restriction will terminate at such time as the operation of the Restricted Medical Use on Parcel C by the Owner or any Occupant of Parcel C is discontinued for a period longer than twelve (12) months, excluding any period during which such Owner or Occupant or its tenant is

unable to operate its medical practice due to casualty damage, eminent domain, renovations to the building on Parcel C, or construction of a replacement building.

Section 2. Restricted Actions by Owners. No Owner shall permit anything to be done or kept on the Property which would be in violation of any law, or which would constitute a nuisance to any other Occupant of the Property. Each Owner shall comply with all laws, regulations, ordinances (including without limitation, applicable environmental laws, building codes and zoning ordinances) and other governmental rules and restrictions applicable to its Parcel.

ARTICLE VIII

BUILDING AND DEVELOPMENT RESTRICTIONS

Section 1. General Standards. All Improvements on the Property shall comply with the terms of the zoning plans and site plans for the Property that have been approved by the City of Charlotte. Any Building constructed on the Property shall be aesthetically and architecturally compatible with the Buildings constructed on the balance of the Property. In particular, it is the intent of Declarant that all Buildings on each Property use the same primary exterior building design elements, exterior building materials and roofing materials so as to maintain a consistent exterior appearance.

Section 2. Site Improvement Restrictions. Site Improvements (as distinguished from building Improvements) constructed on any Parcel shall comply with the following requirements and restrictions:

(a) All curbs and gutters shall be poured in place standard-sized concrete type curbs.

(b) All utility lines and equipment shall be entirely underground, except as indicated on the Site Plan and except for equipment like junction boxes, meters, transformers and backflow preventers.

(c) No on-site septic system or sanitary sewer treatment facility will be permitted on any Parcel.

(d) Pavement markings, directional signs, and other traffic indicators upon each Parcel shall be in accordance with the *Manual on Uniform Traffic Control Devices*, and shall provide for a reasonable traffic flow scheme consistent with that shown on the Site Plan.

(e) All buffer strips and other undeveloped land areas shall be landscaped with trees, shrubs, or suitable ground cover (which includes grass) in a uniform manner.

Section 3. Site Plan Restrictions. All Improvements constructed on the Property shall be located substantially in accordance with the Site Plan; provided, however, that Declarant acknowledges that the exact locations of the buildings and parking areas shown on the Site Plan

are conceptual, and that the Parcels need not be developed exactly as shown on the Site Plan, as long as the other requirements of this Section 3 and Section 4 below are satisfied. Any material deviation from the Site Plan, including any material deviation in the location of the Improvements on the Property from the layout or the location shown on the Site Plan, shall require an amendment to the Site Plan pursuant to an amendment to this Declaration; minor deviations shall be permitted without such an amendment. For the purposes of the foregoing, a “material deviation” shall be any deviation that has a material effect on traffic flow, parking arrangements, or access to any Parcel from the Roadway Easement Areas, the Right-of-Way Areas or the public streets bounding the Property.

Section 4. Building Restrictions. No building Improvement shall be constructed on any Parcel that contains more than the number of stories set forth below, or exceeds the maximum building heights set forth below, including false facades, if any, as measured from the graded elevation of the surrounding graded areas:

Parcel	Maximum Number of Stories	Maximum Building Height
A	2	35'
B	1	25'
C	1	25'
D	4	60'
E	3	45'

Section 5. General Building Standards. No building located on the Property shall have a metal exterior. No structure of a temporary nature shall be allowed on any Parcel at any time, except for construction trailers used by an Owner’s contractors and subcontractors during the period of construction of Improvements. All buildings constructed upon the Property shall conform to the minimum standards specified by the applicable governmental building codes in effect at the time of such construction, as well as to all other rules, regulations, requirements, ordinances and laws of any local, state or federal governmental unit(s) or authorities having jurisdiction thereof.

Section 6. Screening and Related Requirements. All storage tanks, trash containers and maintenance facilities located on any Parcel shall either be housed in closed buildings or otherwise screened from public view in a manner architecturally compatible with the buildings located on that Parcel. All loading docks and associated areas shall have adequate space on each Parcel so that loading and unloading of trucks and service vehicles will not be carried out within the Roadway Easement Areas.

Section 7. Construction Standards. Each Owner, throughout the entire period of construction on its Parcel, shall:

- (a) Store all construction materials within a temporary staging and/or storage area located wholly within its Parcel, at a location that will not unreasonably interfere with access between any other Parcel and the Roadway Easement Areas.

(b) Install and maintain effective erosion control measures that meet or exceed code requirements, in order to prevent the runoff of sediment, dirt and debris from its Parcel.

(c) Cause trucks, construction equipment or machinery to park only within the boundaries of its Parcel, and cause construction vehicles and traffic to follow the routes that may be designated by Declarant or the Association for construction traffic.

(d) Not permit mud, dirt, construction materials, trash or debris to accumulate or remain outside of the building site on its Parcel; or permit construction to proceed in a manner that interferes with the visibility of, access to or the operation of any other permitted use being conducted on the Property.

Section 8. Sign Standards. No signs shall be erected or installed on the Property which violate the following prohibitions:

(a) No sign shall be painted on the exterior surface of any building.

(b) No rooftop signs of any type shall be permitted. In addition, no building-mounted sign or any portion thereof may project above the parapet wall or top of the exterior wall or building facade upon which it is mounted.

(c) All sign cabinets, conductors, transformers, ballasts, attachment devices, wiring and other equipment shall be concealed.

(d) No sign shall be permitted which violates the sign control ordinances or other statutes of the City of Charlotte or Mecklenburg County.

(e) No free-standing sign may be erected on any Parcel, except that, as permitted by the sign control ordinances or other statutes of the City of Charlotte or Mecklenburg County, the Owner of each Parcel may install and maintain one (1) permanently affixed free-standing sign structure on its Parcel not in excess of six feet (6') in height.

Section 9. Landscaping and Irrigation Standards. Each Owner shall provide landscaping for all parking lot areas, buffer areas, and parking lot perimeters, and foundation plantings around buildings, all in compliance with the terms of this Declaration, its approved site plan, and applicable ordinances of the City of Charlotte or Mecklenburg County, North Carolina. Any areas not covered by buildings or paving shall be landscaped with trees, shrubs, ground covers, or irrigated lawn areas.

ARTICLE IX

INSURANCE, CONDEMNATION AND REBUILDING

Section 1. Property Insurance and Rebuilding. Each Owner shall obtain and maintain in force a policy of property insurance (ISO Special Form or its equivalent), covering

all Improvements on its Parcel in an amount equal to at least ninety percent (90%) of the replacement cost thereof, less the cost of any non-destructible items such as paving, foundations and footings. The Association shall obtain and maintain in force such a policy covering the insurable Improvements included within the Designated Maintenance Items, including the Entrance Sign, and the premiums for this policy shall be included in Common Area Costs.

If any Improvements on any Parcel are destroyed or damaged by fire or other casualty, the Owner of that Parcel shall elect to rebuild or not to rebuild the damaged Improvements. If the Owner elects not to rebuild, it shall promptly demolish the damaged Improvements, remove or clean up all rubbish and debris, grade and landscape or pave the area, and thereafter maintain its Parcel in accordance with the provisions of Article VI, Section 1. If the Owner elects to rebuild, it shall proceed with due diligence to repair or restore the Improvements to as good a condition as existed before such damage or destruction, and shall comply in all respects with the provisions of Article VIII.

Section 2. Release of Claims. Each Owner releases each other Owner from any and all liability for any loss or damage to property, or for lost rents or profits, caused by fire or other casualty, even if the fire or other casualty was caused by the fault or negligence of the Owner being released, or by any other party for whom that Owner may be responsible.

Section 3. Condemnation. In the event of a taking by condemnation or otherwise by governmental authority which damages any part of Improvements, the Owner of the damaged portion of the Improvements shall immediately use the condemnation proceeds and other funds, to the extent needed, to repair and restore the Improvements to an integrated and architecturally complete building or structure, if the remaining portion of the Improvements is capable of being so repaired and restored in the discretion of the Owner of those Improvements. If the remaining portion of the Improvements is not capable of being repaired and restored, then the Owner of that Parcel shall promptly demolish the damaged Improvements, remove or clean up all rubbish and debris from the Parcel, grade and landscape or pave the area, and thereafter maintain its Parcel in accordance with the provisions of Article VI, Section 1.

In the event of a taking by condemnation or otherwise of any Parcel, the entire award or purchase price shall belong to the Owner of that Parcel. Notwithstanding the foregoing, any Owner may file a separate claim with the condemning authority over and above the value of the Parcel being taken in fee simple to the extent of any damage suffered by that Owner as a result of the loss of easement or other rights; provided, however, that such claim does not reduce the claim payable to the Owner of fee simple title to the Parcel being taken.

Section 4. Liability Insurance. The Association at all times shall obtain and maintain in force a policy of commercial general liability insurance (current ISO Form or its equivalent) covering the Common Areas, with a combined single limit of at least \$2,000,000.00 per occurrence, which minimum limit may be increased from time to time in the reasonable discretion of the Board. The premiums for this policy shall be included in Common Area Costs.

Section 5. Indemnity. Each Owner shall indemnify, defend and hold harmless each other Owner against all loss, liability, expense and damage, including reasonable attorneys' fees and other litigation costs, arising from death, bodily injury or property damage that occurs on the

Parcel of the indemnifying Owner; provided, however, that this indemnification shall not extend to any claims caused in whole or in part by any act or omission of the Owner being indemnified.

Section 6. Blanket Policies and Certificates. Any policy of insurance required to be carried by any Owner under this Article IX shall be carried with a reputable insurance company licensed to do business in the State of North Carolina on an admitted basis, and may be provided as part of a so-called blanket policy of insurance covering other locations, as long as the coverage limits set forth in this Article IX are satisfied as to its Parcel. Each Owner shall deliver to the Association, within thirty (30) days after written request therefor, a certificate of insurance evidencing that the policies of insurance required to be maintained by it under this Article IX are in full force and effect.

Section 7. Self-Insurance. Any Owner may elect to self-insure all or any portion of the risks required to be insured under Section 1 or Section 4 (other than the liability insurance policy required to be maintained on the Common Areas by the Association) so long as: (a) such Owner has a tangible net worth, determined in accordance with generally accepted accounting principles, consistently applied, in excess of Two Hundred Fifty Million and No/100 Dollars (\$250,000,000.00), as determinable from such Owner's public disclosures and/or regularly maintained corporate balance sheets which are generally available to shareholders (no right of audit or conduct independent investigations being implied by this provision), or if such Owner is not a public company, as determinable from a current audited financial statement evidencing its compliance with the net worth requirement; and (b) such Owner delivers to the Association, within thirty (30) days after written request therefor, a written notice of self-insurance, specifying the risks it has elected to self-insure, accompanied, if such Owner is not a public company, by a current audited financial statement evidencing its compliance with the net worth requirement set forth above.

ARTICLE X

GENERAL PROVISIONS

Section 1. Enforcement. Any Owner, Declarant, the Association and (if applicable) the Management Firm shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, easements, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by any such party to enforce any covenant or restriction contained in this Declaration shall not be deemed a waiver of the right to do so thereafter.

Section 2. Exculpation. Notwithstanding any provision to the contrary contained in this Declaration, it is specifically understood and agreed that there shall be absolutely no personal liability on the part of any Owner, its shareholders, officers, directors, members, managers, or partners, with respect to the performance or non-performance of any of its obligations under this Declaration. Each Owner shall look solely to the Parcel owned by any defaulting Owner, the Improvements located thereon and any insurance or condemnation proceeds related thereto, for the satisfaction of any remedy of the non-defaulting Owner resulting from the breach of any of the obligations or covenants of this Declaration by the defaulting

